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Planned Misery of the Children in Al-Hol: Distancing as Bar to Rights and Consular Protection

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Abstract

Why are Western governments not retrieving detained minor nationals from Al-Hol's purgatory-like conditions? This article shows, under international human rights law, that the status of detained children as rights bearers is uncontroversial, as is their right to positive protection. We raise issues from recent debate on the securitisation of geopolitics in the relationship between the Middle East and the West, to demonstrate that there is little randomness, accidental, or arbitrary in the detained children's suffering. The suffering is a product of the socio-economic arrangement that characterises our prevailing world order—and that is connected to international human rights law's "civilising mission". We conclude by asking: How is the legitimacy of the human rights regime sustained despite fundamental inconsistencies and failures to realise its purpose?

Keywords

Human Rights, Al-Hol, International Law, Minors, Civilizing Mission

1. Introduction

Since the summer of 2019, due to conflict in Syria, as many as 100,000 detainees have been held in the Al-Hol refugee camp located in north-eastern Syria, the longstanding target of Turkish military operations before, during, and after the crisis. Some 90 per cent of detainees are women and children. Around 10 per cent of these are citizens of European Union states; 70 per cent come from the Middle East, over 15 per cent from Russia and Asia, and approximately 2 per cent from the Americas, according to 2019 estimates (Yacoubian, 2022). Condi-

tions in the camp have long been appalling, as it was envisaged to hold only a fraction of the number of detainees currently residing there. In autumn 2019, conditions in Al-Hol deteriorated further: First there was a freezing winter, then Turkish bombing of the Kurdish regions, which caused further mass population displacement. As a consequence, by spring 2020, a report by the UN Office for the Coordination of Humanitarian Affairs and NGOs working in the area stated: "Al-Hol camp entails a purgatory-like existence" (OCHA, 2020).

Along with human rights organisations, the Kurdish administration has been calling on states to repatriate their nationals, assist in the costs of providing for their vital needs during detention, and commit resources to prosecuting the former ISIS fighters, who are brought to justice in Iraqi courts. Simultaneously, various opinion polls in the West and other "home" states have been conducted to show that popular sentiment remains against repatriation. According to these polls, large majorities think that the detainees should be left in camps or prosecuted on site. A poll in France found 89 per cent of respondents opposed the return of adult fighters. Also, a poll in France found two-thirds of people favoured leaving the children of jihadists in Iraq and Syria' (Mai, 2019). As a middle ground, various international tribunal initiatives have circulated, most notably a proposal by Sweden, which emerged and died in 2019. Various EU states have been considering the conditions to establish an ad-hoc international tribunal to prosecute ISIS-fighters. Lately, such policy discussions have been robustly advocated by Sweden (Government Offices of Sweden, Ministry of Justice, 2019).

Although it may be theoretically possible that all the detainees would be investigated and/or processed by the Kurdish People's Courts, the Kurdish administration has few practical resources and little enthusiasm for taking on the huge burden of putting foreigners through its judicial system, considering its own precarious situation in the crosshairs of policies from Baghdad, Damascus, and Istanbul, with Iran, Israel, and other world powers hovering in the background. Subsequently, when the war against ISIS came to an end in 2019 and the number of detainees peaked, international organisations made the following kinds of pleas:

> UNICEF reminds all concerned that these are *children*, *not perpetrators*. They have the right to be safeguarded, including legal documentation and family reunification. UNICEF is calling for the following immediate actions: On all the member states involved; in line with the best interests of the child and in full compliance with international legal standards: take full responsibility for the reintegration of children into their local communities and the safe repatriation of children back to their countries. For all parties to the conflict in Syria and those who have influence over them: to facilitate unconditional humanitarian access to, and inside al-Hol, and everywhere in Syria to reach every child in need wherever they are. (UNICEF, 2019, italics added)

Yet, the situation remains far from resolved. In March 2020, the COVID-19

situation shut down transportation routes globally. Although numerous lockdowns did not prevent the trickling repatriation of tourists and businesspeople throughout the pandemic, they did, however, stop even planning of repatriations from Al-Hol. Many states exploited the situation to postpone the question. For example, Australia and Finland stopped their preparatory work arguing that "(a)t present there is nothing to do but wait" (Orell, 2020). Further, they argued, "(w)e have seen closed borders, significant travel restrictions...[thus] movement in Syria and in the region is now more complex than ever" (Pearson, 2020). During a short period after the pandemic lockdowns commenced in 2020, several hundred detainees died from lack of medicine and food (Pearson, 2020). Detainees were also moved to prisons and unknown sites (Pearson, 2020). Their situations were pushed further back into the legal, political, and physical penumbra.

2. Toward the Root Causes of "Collateral" Suffering

Why are Western states not retrieving the children who are their nationals from these inhuman, torturous conditions? In the article "Human Rights and Root Causes", Susan Marks suggests that in order to grasp the underlying dynamics and causes of human rights violations, scholars should begin from an anti-moralistic perspective: "in place of the question of what governments and others 'should' do" ask "why governments and others *are doing what they are doing*, and *not doing what they are not*" (Marks, 2011: p. 76). We engage with Marks' analysis to show how, under international human rights law, the status of the thousands of detained children as rights bearers is uncontroversial, as is their right to positive protection. We then pursue a doctrinal discussion of the obligation to repatriate and other human rights that require states to act. Finally, we discuss the work physical *distancing* performs, as a bar to industrialised states respecting elementary considerations of humanity or other standards of basic humanity enshrined in the core principles of international law and human rights that have been celebrated in case law and human rights instruments, at least, since the second world war.

The article seeks to pierce through legal technicalities and to grasp the underlying dynamics. We argue that, instead of "random, accidental or arbitrary", the detained children's suffering can be cast as "misery that belongs with the logic of particular socio-economic arrangements" (Marks, 2011: p. 75). We discuss how the situation in Al-Hol is intrinsically connected to our prevailing world order, which continually presents the West as at loggerheads with the Islamic world—and further, at war against terrorism and Islamic radicalisation embodied by ISIS (Jacoby, 2015). Importantly, this adversity is not restricted to the rhetoric of populist right-wing politicians, but equally embedded in the field of human rights scholarship, where Islam has long been represented as predominantly "other" (Cingranelli & Kalmick, 2020; Said, 1978). Our article concludes by reflecting upon how to understand the co-existence of perpetual "others"

with sustained belief in universal human rights ideals. Here, we develop conclusions on law's agency, associated beliefs, and the paradoxes that follow human rights.

For the children detained at Al-Hol, the war is embodied by their mothers: the thousands of women who abandoned the West and travelled to ISIS-controlled territory to become "jihadi brides" and other associated persons. Although many accounts suggest that these women may, in fact, have been groomed or subjected to human trafficking while still underage, they nevertheless pose a significant disturbance in the self-image of Western states (Jacoby, 2015). As Sanna Mustasaari summarises, "(t)he figure of the 'convert' was associated with the horrendous figure of the jihadi terrorist central to the 'Europe at war'-narrative, in which 'us', the Europeans or the Westerners, are pitted against the inhuman enemy that threatens 'the symbolic kinship of the nation, religion and humanity'" (Mustasaari, 2020: p. 13; see also Miller 2018). The perceived threat of female Muslim converts has recently awakened even greater alarm due to reports that ISIS actively recruited women for the purpose of helping to "populate" the future Caliphate (Jacoby, 2015). Subsequently, and quite logically, media accounts dehumanised these women using discourses that have "evoked natural disaster (e.g., waves and floods), toxicity (e.g., poison and viruses), vegetation (e.g., seeds and roots), and the supernatural (e.g., enchantment of 'evil' jihadist men)" (Jackson, 2019; Hall, 1992: pp. 221-225; Mustasaari, 2020a). As a consequence of these portrayals, upholding international law and condemnation of extra-judicial assassinations have weakened.

Our analysis suggests that the "war" against Islamic radicalisation likewise provides justification for the continued detainment of children at Al-Hol. We illustrate how their misery becomes cast as something "planned" (Marks, 2011), and their suffering as "collateral damage" (Jackson, 2019) although we steer clear from any responsibility or, indeed, any alternative courses of action/inaction. Further, we discuss how the detainment appears as "necessary" cruelty for the imposition of "civilised standards of justice and humanity" (Asad, 1996, 1091; Koskenniemi, 2001; Obregon, 2012; Fidler, 2001). Here, our discussion connects with recent ethnographies of state-making, which recognise—as Lori Allen reminds us in her analysis of the growing cynicism toward Palestinian human rights—that "the state always entails some level of spectacle and violence" (e.g. Allen, 2013).

In the case of Al-Hol, state violence manifests itself, in addition to the refusal to retrieve children suffering from inhuman treatment, in distinguishing "what is inside from what is outside" (Martin, 2015) the state's protective space, and thus by extension, that of human rights. Here, we connect with Hanna Arendt's definition of the primacy of the "right to have rights" via the state's protection, as well as Georgio Agamben's notion of "bare life", the production of a life stripped of any rights and value (Arendt, 1951; Agamben, 1998). We ask how the detainees of Al-Hol embody the "others" of our contemporary human rights regime and how they thus become "purifying filters" for Western civilisation

(Martin, 2015).

These "others" struggling to belong here or there but mostly falling in between are the tug of war of electoral debates.[1] Governments are formed and dismantled, and institutions challenged by "the other", framed as security threats, challenges, and costs. Further, "others" are a thumb in the face of human rights ideology: by their mere existence, they confirm the fundamental inconsistencies that characterise the practice of lofty ideals.

3. There Are No Terrorist Children

Analysing the legal position of detained children at Al-Hol, it is useful to commence with the International Convention on the Rights of the Child (ICRC), the most widely ratified human rights covenant in existence. The ICRC includes a protocol on the participation of children in armed conflicts (PoD), which emphasises the convention's *sine qua non*, namely that children are children first and foremost. In other words, they are not child soldiers, child refugees, child terrorists or "ISIS children" but first and foremost children (Sandelowsky-Bosman & Liefaard, 2020). Syria is party to the ICRC and thus all Al-Hol detainees should enjoy protections through the jurisdictional bases of both *ratione personae* and *ratione loci*.

The ensuing state responsibilities are clear: in the spirit of the ICRC, the protocol confirms that children in armed conflicts should be given all appropriate support, including physical and mental assistance with the aim of rehabilitation. States must make technical resources and funding available (UN General Assembly, 2000). The International Committee of the Red Cross likewise confirms this in its special reports on the challenges of children and minors in the harshest of situations (ICRC, 2020). Many Western states, promote a self-image of child- and human rights friendliness. They do not seem to engage child rights on behalf of the children in Al-Hol (Human Rights Watch, 2019).

States have fallen radically short of respecting clear obligations that international child right instruments cast upon them. For example, Finland found that there was no legal obligation to repatriate children's detained mothers or other caregiving adults although scholars disagree (e.g. Mustasaari, 2020b). Many have advocated the highly questionable practice of separating children from their primary caregivers, which is a decision, that child rights regimes do not allow to be made without careful case-by-case investigation. E.g. Finland's attempt to retrieve only children resulted in a complete stalemate, as the Kurdish administration adopted a drastically different view: reportedly, it upheld the conventional standard for "welfare of the child" and thus did not allow to separate the children from their mothers. Kurdish authorities have not been supportive of states extracting children while leaving their mothers in the camp. As this does not support children's rights (e.g. Milanovic, 2020).

[1]We use "other" to point to the entirety of matters/issues/questions/beings "othered" in various ways, such as mental, physical and social distancing, or epistemic/structural/slow violence and "others" when we refer to groups/categories of people, thus treated.

4. Positive Obligations to Protect

The situation has been understood as legally complex because the mothers, the primary caregivers, are stereotyped as extremist "jihadi brides". However, the mothers' legal situation is anything but clear-cut. The security risk and risk to the children that these primary caregivers present would have to be investigated and their possible crimes processed. The criminal and child welfare investigations would, however, require sigificant commitment of funds, experts, detention facilities, and rehabilitation programs, a commitment which the international community seems unwilling to make and which the Kurdish administration of the camps does not possess. Simultaneously, the detainees' home countries, particularly in the West, are not legally able to leave the processing to the Iraqi and Syrian legal systems that, with the exception of the Kurdish courts, still mete out capital punishment, which is absolutely prohibited according to the Council of Europe human rights system.

This raises the question of whether there exist options to repatriate the mothers with their children. One option would be to grant both children and their mothers positive protection. This option stems from the opinions of many commentators that there is cause to believe many of the women who ended up in the camps were subject to human trafficking, undue influence or coercion. Alternately, many commentators believe they were groomed online while underage—according to some, more likely for sex than war (see Mustasaar, 2020b; Jackson, 2019; Fish, 2019; Jacoby, 2015).

Consular protection is one of the most ancient traditions of international justice. In practice consular protection entails the offering of help and assistance (Vienna Convention on Consular Relations 1963 Art. 5). The mutual rights of communication and access (Art. 36) with the purpose of arranging for legal representation, travel documentation, and means to return to one's home state are everyday practice and a part of the millennial tradition of consular relations. Consuls aid those in distress, in addition to the more bureaucratic work of handling visa applications and supporting commerce. Yet, states have also proven reluctant to effect these measures, relying on a range of political, pragmatic, economic, and security justifications for evasion. Western consuls decry the physical dangers and risk in the region which are furthermore cited to dissuade and even prohibit relatives, friends, and NGOs from supporting the return of Al-Hol detainees or visiting them to verify their wellbeing or detention conditions (Hubbard & Méhet, 2020). However, a number of reporters have visited the camp with aid from local authorities and enjoyed safe passage.

To compare this situation with a case some 20 years ago, the International Court of Justice affirmed that, while consular operations are privileges of the state, the system of consular protection entails corresponding individual rights. Consuls and the detainees must have access to each other (ICJ La Grand, 2001). The LaGrand brothers had lived outside Germany most of their lives with genuine links to the United States, where they committed a felony, were prosecut-

ed, received legal but no consular assistance. Despite their status as offenders, they retained consular protection rights including visits.

5. Physical Distancing

Despite secure access to the camp being difficult, many European states have repatriated a few orphaned children. The Kurdish officials have served as intermediaries extracting children from the camps and handing them to receiving states consuls at a considerable geographic distance thus preventing contact attempts to their national consuls by camp detainees. Full orphans are preferred for pick-and-choose protection because of the problems of separating children from their primary caregivers in cases when they still have them.

The preference for geographic *distancing* reveals another technique that emerges from analysis of states' attempts to manage the situation. Formally speaking, detainees cannot claim home state protection or evoke state responsibility for breaches of their rights, as long as they remain *physically* unable to reach the territories or officials of their home states. In other words, when examining the issue from the viewpoint of the law's technicality, as long as detainees remain outside the territory under their home state's control, their home state can wash its hands. Susan Marks' concept of false necessity can be used to understand such a strategy (Marks, 2011). In order to claim protection against arbitrary detention, the detainees should *first* be out of detention and physically within territory under their states' jurisdiction. Normally, only *then* can they make their claim although there are exceptions to the rule (see Mustasaari, 2020b).

The situation of Al-Hol's detainees is not unique. Physical distancing has long operated as a tool by which states deny real, effective rights protection. Insisting upon physical presence, and its counterpart, physical distancing, are archaic protocols from a time before email, GPS and the digital state, which function as absurd, although efficient barriers, regardless of the CNN effect (see Doucet, 2018). Media correspondents and personal social media accounts bring us face to face with the plighted rights-holders, who are deprived of legally voicing the claims even when we can see their lawless circumstances with our own eyes often in (near) real time. The insistence on physical presence is very selecticve considering that states compete over the level and scope of the digitalisation of bureaucratic operations and efficiency in providing e-services and online processes (Adler, 2020). Consequently, physical contact between officials and residents is in sharp decline for economic and, more recently, hygienic reasons. Today governments around the world share information, monitor, manage, surveil, gather, document, and archive personal data on refugees and migrants; they guide flows and organise interceptions, yet they do not recognise rights or protection claims via digital devices.

While everything from personal identification to taxes to medical appointments to education takes place online, states quite archaically require physical

presence for persons for whom it is hardest to realise. Constricted by the knot of our human rights commitments and anti-migrant populist movements, the only human rights-compatible strategy of governments in the Global North is early interception of the undesirable. If we hold that such a strategy passes the tests for "positive obligation to ensure" right to consular protection and the "practical and effective" implementation of other rights, then the best way to characterise human rights is as "the Last Utopia" as Samuel Moyn coins it (Moyn, 2010).

6. Securitisation as Root Cause

The detainees at Al-Hol have lived without dignity for years. Denying their rights compromises their chances of recuperating from exposure to atrocities and war trauma. The longer detainment continues, the greater the likelihood of radicalisation.

Here, we need to examine one more layer, namely, casting continued detainment of former fighters regardless of gender as that of either suspected war criminals or, as is the case for almost all the women and children, as an exceptional security measure. This characterisation is captured by one prevalent media portrayal, namely the description of Western women who have converted to Islam as the "woman warrior" (Jacoby, 2015: pp. 538-539).

Securitisation is a counterstrategy that developed alongside human rights, particularly since 9/11. States of emergency and threats to security are the antithesis of the individualism of human rights and liberal freedoms. Securitisation coincides with the political prominence of terrorism rhetoric (Porras, 1994). The argument concerning exceptional security measures is important to consider for it grants leeway in the observance of the human rights to protection against arbitrary deprivation of liberty and detention without a charge. The UN Human Rights Committee has introduced criteria for exceptional detentions to ensure that they do not become arbitrary. These criteria entail that the detainee must be shown to pose "a present, direct and imperative threat", and that the detention is absolutely necessary to contain that threat. The criteria further state that the "exceptionality" of such detention means that it must remain an extremely exceptional measure. Moreover, the detaining state bears the burden of proof (UN HRC, 2014).

The detaining state is also bound to the *aut dedere aut iudicare* obligation—prosecute or extradite—since even a highly exceptional security threat cannot constitute grounds for indefinite detention. The Kurdish authorities, under whose jurisdiction the camp falls, have manifested no intention of trying to prove that the children or mothers at Al-Hol pose a highly exceptional security threat. Rather, they have pushed for all the foreigners to be repatriated. Their urging has no doubt been intensified by material realities: Satisfying detainees' very basic vital needs costs approximately 27 USD/day/person. Calculated for the large camps this amounts to tremendous amounts, which is money that the Kurdish authorities do not have and should not be expected to expend for a le-

gally dubious detention site holding non-nationals.

7. The "Planned Misery" of Distanced Others

Growing reliance on national security arguments has achieved sometimes-alarming proportions, as examples from the UK illustrate. Following the 9/11 terrorist attacks in the US and translated into action by the 7/7 London attacks, citizenship terms have been restructured along public security lines, meaning that individuals seen to pose a significant threat to "national security" may be deprived of their citizenship (Masters, 2020: p. 342). Since 2010, 150 individuals have lost their UK citizenship, including approximately 120 since 2016 (Masters, 2020: p. 343). From 2006 to 2014, all but one subject was a Muslim man. These instances have generated significant controversy, as they are constructed upon a rhetoric of "us vs. them" (Masters, 2020: p. 342) directed at individuals of immigrant background, who potentially have the opportunity to apply for citizenship from their state of ethnic origin. This, commentators have pointed out, is deeply problematic as it introduces a two-tiered notion of citizenship—those who are seen as "properly British", and those who are seen as "conditionally British on the basis of good conduct".

The high-profile case of British "jihadi bride" Shamima Begum illustrates this. She was 15 when she was "radicalised on British soil" via online grooming, subsequently becoming one of three schoolgirls of the "Bethnal Green trio" to join ISIL terrorist fighters in Syria (Masters, 2020: p. 341; Amanda, 2019). After arriving in Syria, she was married and gave birth to three children, all of whom died in infancy before she was 18.[2] While pregnant with her third child, Begum pleaded with the UK's Home Secretary to be allowed to return home, arguing that she feared for the safety of both herself and her unborn child. Instead of agreeing to her request, the Home Secretary revoked her citizenship on security grounds, making her the first-ever British woman stripped of her citizenship—despite pleas from human rights advocates, Begum's family, and herself, and despite not being "even arrested, tried or convicted of any crime" (Masters, 2020: p. 342). Soon after her citizenship was denied, her new-born baby died.

Revoking Begum's British citizenship rendered her stateless. Her parents originated from Bangladesh but she did not have Bangladeshi citizenship, having been born in the UK. UK officials announced that, based on her ancestry, she could apply for Bangladeshi citizenship, to which Bangladesh, however, responded that it had no plans of issuing her citizenship. Begum appealed the decision, pleading for access to the UK to defend her case (Masters, 2020: p. 342). The plea was first upheld at the Court of Appeal, only to be overturned by another court in a unanimous decision. Critics of the decision point out that Begum's opportunities to be heard while in the camp were limited: detainees had in reality no opportunities to engage in the required online communications (Sabbagh & Bowcott, 2020). Also, refusing to allow her to return to the UK to

[2]"UN independent expert welcomes UK court decision to allow Shamima Begum to fight for citizenship", (UN News, July 16, 2020) at https://news.un.org/en/story/2020/07/1068541.

make her case was considered deeply problematic and prejudiced (Malik, 2021).

Numerous commentators point out that the treatment Begum received undoubtedly has racist and misogynist undertones. They illustrate how public officials highlight Begum's conduct in media interviews, emphasising the danger she would pose to the UK if allowed her to return: that she appeared to show no remorse and further appeared cold and unyielding have been emphasised, making her "unlikeable" (Downing, 2021), and "the wrong kind of victim" (Amanda, 2019). Furthermore, "[w]e are now openly being told Muslim girls are both 'dangerous' and 'in danger' in British schools. Muslim young women are seen as a potentially threatening religious/racialised group in the professional, public and political imagination" (Amanda, 2019). In her analysis of the effects of reporting about Al-Hol, Sanna Mustasaari notes that the social media interactions of detained women are scrutinised to determine whether they show remorse or continued support for ISIS (Mustasaari, 2020a).

The circumstances of detained children at Al-Hol thus appear a "planned misery". The women at Al-Hol, both those who have ended up in the camps for having joined ISIS voluntarily and those who may have been groomed or subjected to human trafficking, are perceived to pose a unacceptable risk to Western states's national security due to their voluntary abandonment of Western ways of life. This act in itself is deeply troubling to a geopolitical order that presents as a central task the need to "save Muslim women", whether they need saving or not, as Lila Abu-Lughod argues (Abu-Lughod, 2013), as well as civilising the world. Western women who voluntarily leave their cultural backgrounds and join forces with the "cultural enemy" disrupt this civilising narrative in a manner that appears as baffling as it is erratic and dangerous. Subsequently, these women must be kept outside their nation states' territories at all costs.

In his discussion on the history of the prohibition of torture Talal Asad draws a distinction between "necessary" and "gratuitous", "wasteful", or "unnecessary" suffering (Asad, 1996: p. 1081). Asad further shows how, in the late 19th century, colonial authorities deployed this distinction to discipline colonised peoples in a dual manner. They used it to outlaw traditional, local punishment practices as gratuitously cruel, justifying colonial punishment forms as necessary to the civilisation process (*ibid*). This resonates with the situation in Al-Hol: whereas the suffering ISIS has inflicted is cast as "barbaric", the suffering caused by the continued detainment of children due to Western states' inaction is presented as absolutely "necessary", or as "corollary suffering" to the necessary suffering of radicalised women, subjected to treatment resembling "colonial punishment necessary to the process of becoming civilised" (Asad, 1996: p. 1091). In this regard, Asad cites Lord Cromer, British Consul-General to Egypt from 1883 to 1907, if cruelties occurred as part of colonial administration, this is because "civilisation must, unfortunately, have its victims" (Asad, 1996: p. 1091). Planned misery denotes the necessary suffering of those dispossessed, exploited, and oppressed.

These observations appear deeply problematic from the standpoint of the human rights regime, the fundamental purpose of which is to curb violence

committed under the pretence of state sovereignty, as well as state sovereignty itself. Yet, the realisation of individual rights is still intrinsically connected to states, as per Arendt's the "right to have rights" (Arendt, 1951). Simultaneously Al-Hol concretises how "one of the essential characteristics of modern biopolitics…is its constant need to redefine the threshold in life that distinguishes and separates what is inside from what is outside" (Martin, 2015: p. 9). Camps, whether for refugees or prisoners, produce "bare life" stripped of any rights and value—a "piece of land that is placed outside the normal juridical order, the camp has become the 'hidden matrix' of the modern political space and the technique of government to exclude, enclose and/or even eliminate those who threaten the security of the state" (Martin, 2015; Agamben, 1998: p. 10). Consequently, camps, among them Al-Hol, function as "purifying filters" of the nation (Martin, 2015).

8. Agency, Belief, and the Human Rights Law Paradox

Al-Hol reveals how complex and layered states' actions are, and furthermore, how the very regimes that are supposed to guarantee the rights of everyone may become vehicles for denying them. These observations leave one final point for consideration: How is belief in the international human rights regime sustained, despite recurring contradictions and a failure to realise its abstract ideals, aims, and purposes? These questions are reflected upon by Lori Allie in her analysis of human rights campaigns in occupied Palestine (Allen, 2013). Allen illustrates how, since the late 1970s, human rights constituted a primary channel for challenging Israeli's occupation and seeking a permanent Palestine government. However, as the years wore on, "the human rights industry" became increasingly a source of cynicism. Yet, Allen notes, this did not result in apathy, but instead turned into fuel for potent criticism of domestic politics, as well as Western interventionism. Something shifted in Palestinians' attitudes toward human rights: inconsistencies experienced in practices surrounding human rights resulted in a loss of faith in the transformative potential of the lofty goals of the abstract discourse and ideology (*ibid*).

Does the Al-Hol prisoners' situation differ such that the inconsistencies in their treatment do not result in similar cynicism? One way to answer this question is to reflect upon it in terms of agency, more specifically, its lack among Al-Hol prisoners. In her ethnography of the European Court of Human Rights, Jessica Greenberg discusses the motivations that the tens of thousands of annual petitioners have for bringing their cases before the court (Greenberg, 2020). Greenberg discusses how these initiatives are accompanied by hope for recognition of wrongdoing and justice, but often result in disappointment and failure. Greenberg illustrates how a relevant determinant of how the experience ends is the knowhow individuals bring to bear: Are they equipped with the relevant competences to argue their concerns in the appropriate legal vernacular, as well as evidence in the form the court expects? However, a case's outcome—even

whether it will be deemed admissible, which the vast majority of cases are not—is not the only relevant factor affecting sustained belief in the transformative power of human rights. Rather, what acquires significance is belief in the availability of the court as a medium via which individuals may present their grievances. Courts acquire iconological meaning similar to the robed judge, as Duncan Kennedy shows (Kennedy, 1997: p. 3).

This is also a defining difference between individuals who take their grievances to the European Court of Human Rights and the prisoners of Al-Hol camps: the former, even if unsuccessful, may continue to believe that, given the right type of evidence and a case the court finds suitable, human rights could offer a vehicle for advancing their concerns and a real and effective remedy. For the latter, no such medium exists: due to the technicalities of the law, it is prefigured—as a (false) necessity—that states which are, at least in the abstract, supposed to recognise and even positively protect rights are able to evade this, with no medium for the latter to challenge, claim, or contest this. This realisation is pivotal. One might argue that it is precisely an objective lack of agency—and an attempt to redress this—for which human rights exist in the first place: they are supposed to be the final resort for vulnerable individuals when they are unable to protect themselves and when there are no resources, no power, no forces to support their dignity.

Examining the situation of Al-Hol prisoners shows, however, that it is precisely a lack of agency which may—instead of making protection of such individuals the top priority of the international community and individual states—lead to their definition as "others", who subsequently fall through the cracks due to technical practicalities. For the Al-Hol detainees, this means concretely that their physical presence outside the geographic areas of their states of nationality allows those states to abdicate their responsibilities.

It seems that the state has gradually lost its significance in the protection of human rights by a remedial framework that "appeared to arise beyond the traditional regulatory competence of such states" (Rajagopal, 2013: p. 895). The construction of legal categories of protection, e.g., the condition of physical presence on the territory of the European Convention of Human Rights states to receive the consular assistance that would lead to the ability to claim further human rights, prefigures the misery of the purgatory-like contingency of no escape from Al-Hol.

Several scholars discuss human rights' inability to challenge fundamental structural inequalities. For example, Moyn criticises the inability of human rights to challenge economic inequality and to secure economic and social rights for the world's most underprivileged groups (Moyn, 2018). From the viewpoint of discussing the role of the law, the situation of Al-Hol prisoners suggests that increased legislation plays a different role: finetuning details such as geographic jurisdiction serve to deny realisation of rights bestowed upon all people, simultaneously resulting in the creation of "others" who fall outside the realm of pro-

tection. There seems to exist a tendency to think it essential for maintenance of our trust in law that it contains technical categories and conditions—such as ratione territoriae—which are defended absolutely, even at risk of harming the vulnerable. The last is dismissed as an unfortunate necessity of evenhanded application of human rights law.

These insights cast the role of the law in a new light: instead of serving as a medium to assist in the greater realisation of abstract ideals embedded in universal human rights, the law is a tool to manage states' underlying reluctance to live up to these ideals when reality makes doing so impractical or undesirable—as is the case with returning Al-Hol prisoners to their countries of origin. Importantly not only is the law *not* the opposite of politics—the law becomes the medium through which political goals become legitimated and neutralised.

9. Conclusion: Al-Hol as Human Dignity Purgatory

The terrorism-associated children detained at Al-Hol do not enjoy practical and effective protection of their rights. Instead, they witness how any practical implementation and effective measures to ensure their rights are qualified by, conditioned upon, and postponed through endless technical, bureaucratic, security, and, finally, *force majeure* conditions; or superseded by concerns over who can order whom to do what and in which order within the bureaucracies and human rights organisations of involved states.

We watch sick, malnourished, frozen, uneducated children dragged through slushy mud by their black-draped stick-figured caregivers and feel socially, physically, culturally, and humanly *distanced* from those wretched beings (cf. Sontag, 2003). Even if they share our nationality, they seem distant and irrelevant, even more so during the pandemic-era, heightened geo-biopolitical hygiene. Their condition appears as the aftermath of our successful outlawing of the terrorist Caliphate and those unfortunate Westerners, who became foreign fighters, their brides and offspring, or other followers and associates. Their mode of life, their ends and means, their social order, discipline and punishments appalled us as barbaric when they were roaming the fringes of decimated Syria. At the same time and immediately after their defeat, the majorities of home-state populations started regarding the barbaric misery of detention at Al-Hol as a fair consequence for the foreign fighters' obscene fascination with radical ideologies or even just with the Orient. The destiny of them and their families appears as a result of succumbing to the romantic lure of a war that resulted in the abandonment of the West and the comforts of home. Furthermore, there is an irreversible association with terrorism among those who travelled there "voluntarily", as the argument against their rights emphasises (Pearson, 2020).

Our claim is not that the practicality, effectiveness, or belief in rights are disappearing or that bad faith is on the rise among governing elites; it is rather that the law in the contemporary political economy emerges as a platform for planned miseries and reinforced bio-geopolitical hygiene. This offers the edifice,

tools, strategies, and techniques to reproduce prefigures, or "planned misery" for others who live differently from us, venture outside our realm, seek ideological alternatives, or challenge the grid of global ideological centres. It exploits the penumbra and rights' technicalities to the fullest. But, as Marks points out, such scenarios demonstrate the falseness of our necessities, along with the contingencies.

Our narcissistic metaphysics translated through liberal international system make the Al-Hol scenario inevitable but to say that we do not have a choice would be a false necessity. Human rights organisations are publishing calls and reports, and governments are scrambling through technicalities that, for the most part, circumvent "practical and effective" rights. Yet, somehow, belief in the system of human rights and the rule of law, their advancement particularly in the Global North, is growing stronger—to the point that populist leaders garner immense support by claiming that "rights have gone too far" and "(e)ncouraged by populists, an expanding segment of the public sees rights as protecting only these 'other' people, not themselves, and thus as dispensable" (Roth, 2020). This dilemma characterises the paradoxical polarisation of the Global North, which, however, is not reducible simply to fake news and political balancing acts.

Dogmatic or policy responses demanding clarification, debating misdemeanour classifications, requesting better legislative guidance, securitising the issues, and decrying the lack of political will mask the raison d'être for evasive strategies. They funnel debates into an oscillation between false necessities and false contingencies. Either we are persuaded that it is very unfortunate and impossible to reach the vulnerable undesirables, since they are beyond our geographical and ideological realms—and left them voluntarily; or, that human dignity only deserves protection when it is claimed in physical contact with our soil. As a false contingency, we are made to believe that it is the complex emergency created by ISIS, the Kurdish situation, the current leadership in Turkey and the United States, the COVID-19 pandemic, and the lack of safe-passage roads for consular staff that prevent the Al-Hol children from enjoying their human rights and dignity. In every instance, the children themselves dwindle from focus.

It is no accident that the Al-Hol children look into our Western eyes from a "purgatory" true to the religious definition. A purgatory is a "geographical place" that makes us "undergo correction...satisfy old debts, cleanse accumulated defilements, and heal troubled memories", an in-between state (Zaleski, 2019). Importantly, Christian purgatory thus defined is not just a concern for those suffering there; it is very much the concern of us all to pay debts, balance accounts, offer alms, and reflect (*ibid*). It feels troublingly fitting to think of Al-Hol as purgatory and the children as living without rights, thus, without proper lives, for whom we would have to perform suffrage. In Western discourses, those willing to account for them are few. Al-Hol is, in many ways, a resurrection of the Global North's other, the various cultural narratives and symbols attached to

it from the obvious religious ones to Orientalism, and beyond.

Our ideological climate does not favour relational thinking between cultures, humans, rights-bearers, selves, others. European and American populisms feed upon deciding who wins the race; forget losers. In this light the historical connection of human rights and Christian virtue provide one the few remaining languages in which to raise issues such as our planned purgatories (Slotte & Halme-Tuomisaari, 2015).

It is in this light that the metaphysical dimensions of Al-Hol and our struggle with the other unveil themselves. The debate is guided by the strategies of intended ambiguity, overall securitisation, foregrounding the rule penumbra, *force majeure*, and harking back upon geography as an antidote to digital globalisation and humaneness, reinforcement of bio-geopolitical governance, and postponement of encounters with the Other. We avoid complicity in the planned misery of Al-Hol intellectually, politically, and legally through the techniques at our disposal—which maintain the paradoxical beliefs in the advance of human rights. The others, their beliefs and miseries, are distanced. They remain those who may or may not be permitted into the realm of legitimate legality. For the many reasons of mental, physical, and political hygiene, the others in Al-Hol are not repatriated because "they went there voluntarily". But even in the mythology of purgatory, it is not they who should undergo correction. According to the myth, it is the task of those still in the land of the living, protected, to correct. Thus, it is our task address both the root causes of planned misery and steer ourselves back to elementary considerations of humanity, even with regards to our enemy, our Other.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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